

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

T.Y.B.E. LEARNING CENTER and)
CARMEN AUSTELL,)
Plaintiffs,)
vs.) Case No. 4:09-CV-1463 (CEJ)
HON. JOSEPH P. BINDBEUTEL, KATHY)
QUICK, and KIMBERLY SPRENGER,)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs' motion to consolidate this action with Small Hearts Daycare Center II, LLC v. Kathy Quick, No. 4:09-CV-2132 (HEA). Defendants in this action have filed a response in opposition to the motion.

I. Background

Plaintiff Carmen Austell is the owner/operator of plaintiff T.Y.B.E. Learning Center, a daycare center licensed by the Missouri Department of Health and Senior Services (DHSS). On August 24, 2009, plaintiff Austell was informed that her request to renew her operating license was denied and that, because the license had expired on July 31, 2009, she could no longer provide daycare services to more than four unrelated children. The Missouri Department of Social Services (DSS) cancelled its contract with plaintiffs and ceased providing daycare subsidies for children receiving DSS support. Plaintiffs filed with the Administrative Hearing Commission (AHC) a request for administrative review and a motion to stay administrative action. The AHC determined that it lacked subject matter jurisdiction and dismissed plaintiffs' action. On September 14, 2009, plaintiffs filed suit against Joseph P. Bindbeutel, Commissioner with the AHC; Kathy Quick, Administrator of the Section for Child Care

regulation at DHSS; and Kimberly Sprenger, Legal Coordinator at DHSS. Plaintiffs assert state law claims for tortious interference with a business expectancy, improper application of statutes regarding the procedures of the AHC, and a claim pursuant to 42 U.S.C. § 1983 for unlawful deprivation of a property interest in their daycare license. Plaintiffs also sought a temporary restraining order. Following a hearing, the Court entered a temporary restraining order to permit plaintiffs to operate as a licensed child-care facility during the pendency of administrative proceedings involving the renewal of their license. On October 8, 2009, the Court granted the parties' joint motion to enter preliminary injunction.¹

On December 31, 2009, plaintiffs' counsel filed suit on behalf of Small Hearts Daycare II, LLC, and its owner/operator Walter Coleman, naming Kathy Quick as defendant. The case was assigned cause No. 4:09CV2132 and assigned to United States District Judge Henry E. Autrey. Plaintiffs Small Hearts and Coleman allege that, on October 8, 2009, DHSS denied their application to renew their daycare license and notified them that they would be unable to provide care for more than four unrelated children. Plaintiffs allege that DHSS has sent copies of the denial notice to third parties. Small Hearts and Coleman allege that they have notified DHSS that they wish to have an administrative hearing. They have also filed a motion for a temporary restraining order.

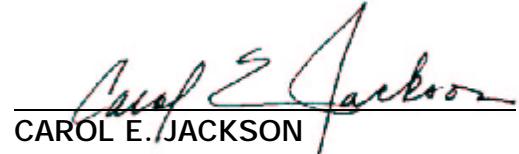
Rule 42(a), Fed.R.Civ.P., provides that a court may consolidate actions involving common questions of law or fact. The circumstances surrounding the nonrenewal of the plaintiffs' licenses will be central to resolution of plaintiffs' claims. The cases

¹Under the terms of the preliminary injunction, plaintiffs are allowed to operate as a licensed child care facility and are required to adhere to all applicable laws and regulations; DHSS is authorized to oversee the facility and to request dissolution of the injunction upon discovery of evidence of imminent harm or danger to children.

present different centers, different owner/operators, different facility inspectors, and different alleged violations of DHSS regulations. These differences outweigh the commonalities.

Accordingly,

IT IS HEREBY ORDERED that the motion to consolidate this action with Small Hearts Daycare Center II, LLC v. Kathy Quick, No. 4:09-CV-2132 (HEA) [Doc. #33] is denied.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 14th day of January, 2010.